Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 1114 of 2001

Smt. Katigi Devi …….. **Appellant.**

Versus

New India Assurance Co. Ltd.
And another . …….. **Respondents.**

Mr. N.S. Negi, learned counsel for the appellants.
Mr. R.B. Agarwal, Advocate, learned counsel for respondents no. 1.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

(Delivered by Hon'ble Justice B.S. Verma)

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (***in short the Act)*** *against the judgment and Award, dated 4-12-2000, passed in M.A.C.T. Case No. 26 of 1999, Smt. Katigi Devi and others Vs. New India Assurance Co. Ltd. and another, by the Motor Accident Claims Tribunal Chamoli (**hereinafter referred to as the Tribunal),** whereby the learned Tribunal has awarded a sum of Rs. 10,000/- in favour of the claimant-appellants, as against the Opposite Party No. 1-respondent no. 1 Aggrieved, the claimant-appellant has come up in appeal with a prayer of modifying quantum under the impugned judgment and award and has assailed the impugned and award on the ground that order of the learned Tribunal is not based on the evidence on record.*

Brief facts, giving rise to the present appeal, are that on 31.12.1997, the husband of the claimant-appellant Dulap Singh was coming from Tephana to his house by Jeep No. U.P. 06-0175 and at about mid night, due to rash and negligent driving of the

Jeep in question, a motor accident took place resulting into grievous injuries to said Dulap Singh, who was brought to District Hospital, Gopeshwar, where he was given treatment. Since the foot of the injured was badly crushed in the accident, therefore, amount of Rs. 80,000/- was spent on the medical treatment. It is also alleged that the foot/leg of her husband was operated upon several times and consequently, he died on 27.12.98 as a result of injuries sustained by him the accident. The deceased was aged about 51 years at the time of his death and was earning Rs.7,000/- from agriculture and service. The claimants being heirs and dependents of the deceased have filed claim petition claiming Rs. Three lacs.

The O.P. No.1-respondent no.1 contested the case by filing its written statement. It has denied the allegations made in the claim petition and has pleaded that the driver of the vehicle involved in the accident had no valid driving licence, registration certificate, etc. The deceased was not a valid passenger and the premium of policy has not been paid.

The O.P. No.2/respondent no. 2, Madan Singh, owner of the offending vehicle has contested the claim petition by filing his written statement. He has admitted that on 31.12.97, he was owner of the jeep involved in the accident and he was possessing all necessary valid documents, namely, registration, fitness etc. and the Jeep was duly insured with the O.P.-Respondent No. 1. It was further pleaded that on the date of accident, the driver Prem Singh was driving the vehicle cautiously and due to mechanical/technical fault, the accident had occurred. This liability to pay compensation rests on the Insurance Company lone.

On the pleadings of the parties, the learned Tribunal framed as many as four Issues in the Case. ***Issue No.1*** related to the rash and negligent driving by the driver of the offending Jeep resulting into grievous injuries and consequent death of the

deceased. ***Issue No.2*** has been framed regarding holding of valid driving licence, registration, fitness, etc, of the said vehicle and its due insurance with the New India Assurance Company at the time of accident. ***Issue No. 3*** *related* to the relief. ***Issue No. 4*** has been framed whether the accident was result of technical fault of the vehicle as alleged by Opposite Party-Respondent No.2 Madan Singh.

From the side of claimant, extract of family register, X-ray Form 35 and certified copy of injury report have been filed. The claimant-appellant has also examined herself as P.W.1. On the other hand, the owner of the vehicle has filed photo copies of cover note of Insurance Policy, registration certificate, fitness certificate and driving licence (***Exts. A-1 to A-4)*** have been filed. They have been admitted on behalf of the O.P. Respondent No.1. However, no oral evidence has been led on behalf of the Opposite Parties.

The learned Tribunal after hearing both the parties and considering the evidence, both oral and documentary, before it, took Issue Nos.2 and ultimately came to the conclusion that at the time of accident, the owner of the vehicle involved in the accident was holding all necessary valid documents including valid driving licence. He accordingly decided this issue. The learned Tribunal then took Issue Nos.1 and 4 together and after discussing the entire evidence found that the accident in question was result of rash and negligent driving by the driver of the jeep in question and not due to technical fault of the vehicle. He accordingly decided these issues in favour of the claimant-appellant. On Issue No.3, after considering the material before it and discussing the evidence in detail, the learned Tribunal has held that if cannot be presumed that the death of the deceased Dulap Singh after one year of the accident was the result of the injuries received by him in the accident. Ultimately, finding that the accident in question was result of rash and negligent driving by the driver of the offending Jeep, the

learned Tribunal concluded that the claimant-appellant is only entitled to get compensation worth Rs. 10,000/- (ten thousand) for the injuries of the deceased Dulap Singh and accordingly, the Tribunal has awarded the compensation, as mentioned earlier.

It has been vehemently argued on behalf of the Appellant before us that the learned Tribunal lost sight of the fact that the claim petition was filed by the claimant-appellant and not for the injuries only sustained by the deceased. Our attention has also been drawn to the death certificate issued by the Pradhan of the village concerned showing that the deceased died on 27.12.98 consequent to the injuries sustained by him in the motor accident. Therefore, the findings of the learned Tribunal are liable to be set aside and it is a case fit in which just compensation ought to have been awarded on account of death of the deceased.

We have heard learned counsel for the appellant as well as learned counsel for the respondent no. 1 and have carefully gone through the entire material available before us.

It is true that in the present case, the death of the deceased had taken place after about one year of the accident. It is also true that no Post Mortem Report was available before the learned Tribunal. But the most important aspect of the case is that the present claim petition has been filed for compensation for the death of the deceased Dulap Singh. It may be noticed here that it is a case in which the injured-deceased remained hospitalized at various places in connection with his treatment and that the bereaved claimant family belongs to a remote village falling in the hill district of Chamoli. It is also true that adequate documentary evidence in respect of medical treatment undergone by the injured was not available before the Tribunal. But the crux of the case lies in the written statements filed on behalf of the contesting opposite-parties/respondents. None of the opposite parties-respondents has

categorically denied in the written statement that the death of the deceased Dulap Singh was the ultimate result of the injuries sustained by him in the motor accident. Unless the factum of death was specifically denied by anyone of the Opposite Parties, it ought not to have been concluded by the Tribunal that it was a case in which the claimant has failed to prove the death of the injured as the outcome of the injuries sustained by him in the motor accident. It is not noteworthy that the claimant Katigi Devi in her statement on oath has stated that the foot of the deceased was subjected to amputation. It is not borne out from the material before us that the claimant-appellant would have given such a statement just to extraneously exaggerate the amount of compensation. There is clear cut finding of the learned Tribunal that the accident in question was the result of rash and negligent driving by the driver of the jeep involved in the accident. There is death certificate issued by the Pradhan of the village. In the rural areas, Pradhan of the village is considered as the Warden of the village people. It is true that Pradhan of the village concerned has not been adduced as witness before the Tribunal; but in the peculiar facts and circumstances of the case, especially when there is no categorical dispute regarding death of the deceased as a result of accidental injuries, we are inclined to accept the arguments of the learned counsel for the appellant that in the present case, compensation ought to have been awarded for the death case.

Having considered the facts and circumstances of the case from all the four corners, we hold that the death of deceased Dulap Singh was the result of injuries sustained by him in the alleged motor accident. The deceased was aged about 51 years at the time of his death. His age has not been disputed specifically at any time of the proceedings. Now, the question is as to what was the income of the deceased.

On the record, specific income of the deceased has not been proved, though it has been mentioned that the deceased was an employee of the Forest Department. Therefore, notional income of Rs. 15,000/- per annum as per Second Schedule of Section 163-A of the Act shall be taken into consideration. After deducting 1/3rd as personal expenses of the deceased, the annual loss of dependency comes to Rs. 10,000/- The deceased comes in the age group of 50-55 years, therefore, the appropriate multiplier of 11 shall be applicable. Accordingly, total loss of dependency comes to 10,000 x 11= 1,10,000/- Taking into consideration the peculiar circumstances of the present case, we feel it just and proper to meet the ends of justice to award the sum of Rs. 1,10,000/- (one lac ten thousand) along with Simple Interest @ 9% per annum from the date of filing of claim petition till the date of payment to the claimant-appellant. Accordingly, the judgment and award under appeal deserves to be modified. The appeal deserves to be allowed.

The appeal is allowed. The order of the learned Tribunal, under appeal, is modified as observed above. No order as to costs.

Date August 24,2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP